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Proposed Counsel for David Stapleton,  
Receiver

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

SILICONSAGE BUILDERS, LLC aka  
SILICON SAGE BUILDERS and  
SANJEEV ACHARYA,

Defendants.

Case No. 3:20-cv-09247-SI

**REPLY TO LIMITED OBJECTION BY  
CREDITOR WESTERN ALLIANCE  
BANK TO MOTION OF RECEIVER,  
DAVID STAPLETON, FOR ORDER IN  
AID OF RECEIVERSHIP TO:**

**(1) EMPLOY COUNSEL;**

**(2) SPECIFICALLY IDENTIFY 2101  
ALUM ROCK, LLC AS BEING WITHIN  
THE SCOPE OF THE RECEIVERSHIP  
ESTATE;**

**(3) ESTABLISH PROCEDURES TO  
MAINTAIN INVESTOR  
CONFIDENTIALITY; AND**

**(4) ESTABLISH PROCEDURES FOR  
PROVIDING NOTICE OF CERTAIN  
MATTERS TO INVESTORS AND  
CREDITORS**

Date: April 23, 2021  
Time: 10:00 a.m.  
Crtrm.: 1 – 17<sup>th</sup> Floor  
Judge: Susan Illston

1 Western Alliance Bank objects to the Receiver's proposed procedure to maintain  
2 investor confidentiality by not filing certificates of service with the Court that identify each  
3 investor and contain their contact information. What Western Alliance does not address  
4 is that although the investors are a key constituency of the receivership, they are not  
5 parties to this litigation and they have not willingly availed themselves of this process.  
6 There is no Federal Rule of Civil Procedure that addresses the notice requirements for  
7 actions by a receiver to administer an estate. Instead, Federal Rule of Civil Procedure 66  
8 provides that "the practice in administering an estate by a receiver or a similar court-  
9 appointed officer must accord with the historical practice in federal courts or with a local  
10 rule." In implementation of this rule and to ensure that investors are given notice of  
11 matters that affect them, Civil Rule 66-6 requires that the Receiver give notice to  
12 interested parties of the time and place of certain hearings under Local Rule 7-2. The rule  
13 says nothing about filing a proof of service that lists all of the names and addresses of  
14 those served. The filing of a declaration attesting to their service is evidence to the Court  
15 that the Receiver has satisfied the requirement of the rule and is not an attempt to  
16 circumvent the procedures for filing certain matters under seal.

17 In acknowledgment of the fact that investors are not willing participants in these  
18 types of cases, it is common in equity receiverships to take steps to protect the privacy of  
19 investors. For instance, in *SEC v. Byers*, 671 F.Supp.2d 531 (S.D.N.Y. 2009), the  
20 receiver assigned each investor a number and in pleadings related to their claims,  
21 referred to them by number rather than by name. *Id.* at 532; *see also U.S. Commodity*  
22 *Futures Trading Comm'n v. Capitalstreet Financial, LLC*, 2010 WL 2572349 at \*3  
23 (W.D.N.C. 2010)(referring to investors in pleadings by their account numbers in order to  
24 protect their privacy). This makes sense because investors who are victims in cases filed  
25 to enjoin fraudulent conduct are different than creditors in bankruptcy cases where  
26 fraudulent conduct may be an element of the case but not the reason for its existence.  
27 When the names of investors in schemes with fraudulent conduct become public, the  
28 investors sometimes become targets of unscrupulous actors who may view them as

1 being susceptible to fraudulent schemes. Procedures like the one the Receiver is  
2 proposing protect them from being revictimized.

3 Although the Receiver believes it may be appropriate to maintain investor privacy  
4 throughout the case like the courts did in the two cases cited above with respect to the  
5 claim and distribution procedures, the Receiver is not asking for approval of such  
6 procedures at this time. The relief being sought is limited to certifications regarding the  
7 notice required by Civil Rule 66-6 and is entirely appropriate.

8 With respect to Western Alliance's concern about maintaining ECF notification, all  
9 pleadings filed with the Court will continue to be served electronically through the Court's  
10 e-filing system.

11 The Receiver requests that the Court overrule the limited objection and grant the  
12 relief requested.

13  
14 DATED: April 8, 2021

Respectfully submitted,

15 SMILEY WANG-EKVALL, LLP

16  
17 By: /s/ Kyra E. Andrassy

18 KYRA E. ANDRASSY

19 Proposed Counsel for David Stapleton,  
20 Receiver  
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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, DISTRICT COURT, NORTHERN DISTRICT**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 3200 Park Center Drive, Suite 250, Costa Mesa, CA 92626.

On **4/8/2021**, I served true copies of the following document(s) described as **REPLY TO LIMITED OBJECTION BY CREDITOR WESTERN ALLIANCE BANK TO MOTION OF RECEIVER, DAVID STAPLETON, FOR ORDER IN AID OF RECEIVERSHIP TO: (1) EMPLOY COUNSEL; (2) SPECIFICALLY IDENTIFY 2101 ALUM ROCK, LLC AS BEING WITHIN THE SCOPE OF THE RECEIVERSHIP ESTATE; (3) ESTABLISH PROCEDURES TO MAINTAIN INVESTOR CONFIDENTIALITY; AND (4) ESTABLISH PROCEDURES FOR PROVIDING NOTICE OF CERTAIN MATTERS TO INVESTORS AND CREDITORS** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**(X) (BY COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"))** – Pursuant to United States District Court, Central District of California, Local Civil Rule 5-3, the foregoing document will be served by the court via NEF and hyperlinked to the document. On **4/8/2021**, I checked the CM/ECF docket for this case and determined that the aforementioned person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated.

**(X) (BY U.S. MAIL).** I enclosed the document(s) in a sealed envelope or package and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Smiley Wang-Ekvall, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with USPS in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Costa Mesa, California.

**( ) (BY E-MAIL).** By scanning the document(s) and then e-mailing the resultant pdf to the e-mail address indicated above per agreement. Attached to this declaration is a copy of the e-mail transmission.

**( ) (BY FACSIMILE).** I caused the above-referenced documents to be transmitted to the noted addressee(s) at the fax number as stated. Attached to this declaration is a "TX Confirmation Report" confirming the status of transmission. Executed on \_\_\_\_\_, at Costa Mesa, California.

**( ) STATE** I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

**(X) FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 8, 2021, at Costa Mesa, California.

/s/ Lynnette Garrett  
Lynnette Garrett

## SERVICE LIST

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**BY U.S. MAIL:**

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United States District Court  
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